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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,813	12/12/2003	Francis M. Claessens	46505/4	2792
1912	7590	09/07/2005		
AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016			EXAMINER ALEMU, EPHREM	
			ART UNIT	PAPER NUMBER
			2821	
DATE MAILED: 09/07/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/734,813

**Applicant(s)**

CLAESSENS ET AL.

**Examiner**

Ephrem Alemu

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 16 June 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-4 is/are allowed.
- 6) ☒ Claim(s) 1 and 5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Halperin et al. (US 6,226,619 cited by applicant).

Re claim 1, Halperin discloses an apparatus for use in detecting the authenticity of a container sealed with a cap (i.e., seal) (Figs. 3, 4), comprising:

a radio frequency identification tag (32) comprising a substrate (32) and a radio frequency transceiver circuit (i.e., circuit chip 322 including antenna 323) adapted to transmit a signal upon receipt of a transmit command and mounted upon the substrate (Figs. 3, 4; Col. 4, lines 8-46; Col. 6, lines 13-38);

a cap (i.e., sealing cap 31B) for sealing the content of a container (i.e., bottle 1) in the container, the cap having a closed end and an open end, the radio frequency identification tag (i.e., circuit chip 322 including antenna 323) mounted on an inner surface of the cap (i.e., inside surface of the closed end part of the sealing cap 31B) (Figs. 3, 4; Col. 6, lines 13-38); and

an engagement member (i.e., cork 31A) interconnecting the substrate and the container such that removing the cap from the container results in the fracture of the substrate thereby causing the radio frequency identification tag (i.e., circuit chip 322 including antenna 323) to become permanently disabled (Figs. 3, 4; Col. 4, lines 8-46; Col. 6, lines 13-38).

*Claim Rejections - 35 USC § 103*

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Halperin et al. (US 6,226,619) in view Taylor (US 3,847,295).

Re claim 5, Halperin does not teach the container and the cap including threads.

Taylor teaches of providing a bottle container (1) and a cap (21) including threads for the purpose of threadably receiving the cap by the bottle for the purpose of retaining the cork in sealing engagement within the neck of the wine bottle (Fig. 1; abstract; Col. 2, line 66- Col. 3, line 4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cap and container of Halperin by providing threads as taught

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by Tayler for threadably receiving the cap by the bottle for the purpose of retaining the cork in sealing engagement within the neck of the wine bottle as taught by Tayler.

### ***Response to Arguments***

Applicant's arguments filed 5-23-2005 have been fully considered but they are not persuasive. In response to applicant argument " in the present invention of claim 1, only the cap is used to seal the content of the bottle is respectfully disagreed. The Examiner would like to direct Applicants to Applicants invention as illustrated in Fig. 1, the content of the bottle is sealed with the bottle insert 200 and the cap 300 similar to the structure Fig. 3, as disclosed in Halperin patent. Thus, Halperin discloses the cap (i.e., sealing cap 31B) for sealing the content of a container (i.e., bottle 1) in the container, the cap having a closed end and an open end, the radio frequency identification tag (i.e., circuit chip 322 including antenna 323) mounted on an inner surface of the cap (i.e., inside surface of the closed end part of the sealing cap 31B) (Figs. 3, 4; Col. 6, lines 13-38); and the engagement member (i.e., cork 31A) interconnecting the substrate and the container such that removing the cap from the container results in the fracture of the substrate thereby causing the radio frequency identification tag (i.e., circuit chip 322 including antenna 323) to become permanently disabled (Figs. 3, 4; Col. 4, lines 8-46; Col. 6, lines 13-38); as claimed in claim 1. Therefore, Halperin anticipates claim 1.

### ***Allowable Subject Matter***

6. Claims 2-4 have been allowed for the reasons indicated in the previous office action.

### *Conclusion*

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

### *Correspondence*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ephrem Alemu whose telephone number is (571) 272-1818. The examiner can normally be reached on M-F Flex hours.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don K. Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

EA  
9-03-05



**WILSON LEE**  
**PRIMARY EXAMINER**